THE ACTIVIST REPORT

13D Monitor

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Corporate Governance at eBay

Say what you want about Carl Icahn, but very few people have as much experience and knowledge regarding issues of corporate governance as he. For many years he has engaged companies with horrific corporate governance practices (i.e., Chesapeake, Forest Labs) and has often been able to rectify those problems and generate significant returns for himself and the other shareholders. However, he is encountering something at eBay that even he may have never encountered before – a board that not only practices poor

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The Truth About Activists and the 10 Day 13D Disclosure Period

There has been a lot of attention lately on shareholder activism and proposals to shorten the 13D filing period from ten calendar days. The media loves using "Activism" in its headlines and has developed many buzz words that they try to relate to activism, even if there are no facts or evidence to support that they have anything to do with activism. I have always viewed the Wall Street Journal as an objective financial newspaper with the utmost journalistic integrity. That's why I was surprised to see two related stories on two consecutive days that displayed a level of inexperience, contained inaccuracies and appeared biased. In their defense, shareholder activism is a relatively new subject for many in the mainstream media and the Wall Street Journal and others are still trying to get their sea legs on the issues associated with activism. As a result, it took four people to write the first

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Under the Threshold Activism Below 5%

NEW

INTEVAC

On March 18, 2014, Voce Capital Management LLC filed a preliminary proxy on Intevac, Inc. (IVAC) and nominated the following three individuals for election to the Board: (i) Marc T. Giles, (ii) Joseph V. Lash and (iii) J. Daniel Plants. Voce disclosed that it is concerned by the Company's long-term underperformance, capital allocation choices and strategic direction. Voce believes the Board faces many strategic decisions relating to the Company's current and future portfolio of businesses and does not believe the current Board has the ability to properly address these issues.

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10 Questions with Richard Grossman

Richard J. Grossman is a partner at Skadden, Arps, Slate, Meagher & Flom LLP, where he focuses on proxy contests, responses to shareholder activists and shareholder proposals, corporate governance matters, mergers and acquisitions, and leveraged buyouts. He also advises companies in contested proxy solicitations and other contests for corporate control, unsolicited acquisition proposals, and in the design and implementation of shareholder rights plans and other corporate protective measures. Richard was able to make the time to sit down with us for this month's edition of 10 Questions.

13DM: What advice do you give to your

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Investor Communications Network
250 West 57th Street, Suite 915
New York, NY 10107
www.13DMonitor.com
(212) 223-2282

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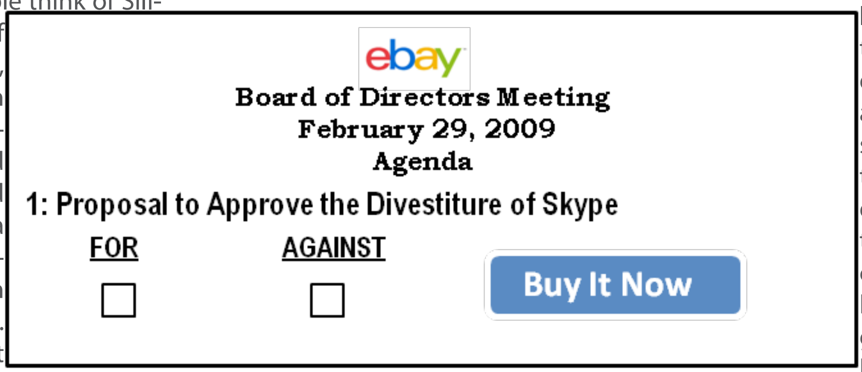
corporate governance but can't even recognize poor corporate governance when they see it. Boards engaged by Mr. Icahn and other activists routinely defend and deny their poor corporate governance practices, even though everyone, including the sophisticated shareholders, know what's going on. But I really think it is possible that the eBay board is not playing dumb with respect to corporate governance, but that they have been so insulated in the incestual Silicon Valley environment for so long that they really do not understand what good corporate governance is. When people think of Silicon Valley, many think of Google, Apple, Yahoo, etc., but the truth is that Silicon Valley and Venture Capital is primarily comprised of private companies, and most of the lifecycle of a venture capitalist in Silicon Valley takes place on private company boards. But the rules are different for public companies, and public company directors have a different constituent base. Unfortunately it does not seem that the eBay board is aware of this distinction.

So Carl Icahn is relegated to a fight with an unusual adversary. The back and forth between Icahn and the eBay directors is somewhat reminiscent of the classic scene from *This Is Spinal Tap* where Christopher Guest is explaining to Rob Reiner that he has the loudest amp in the world because it goes up to 11 and all other amps only go up to 10. Rob Reiner asks why don't you just make 10 louder and Christopher Guest responds: "This one goes to eleven." This type of systematic disconnect makes it difficult to have a clear debate between the parties. So, let us look at the corporate governance situation at eBay.

Carl Icahn argues that numerous conflicts surround eBay directors Scott Cook and Marc Andreesen sitting on the Company's Board. eBay responds that these conflicts are minor and inevitable in Silicon Valley technology companies. Everyone will admit that there are conflicts on the Board of eBay as with virtually all Silicon Valley technology companies. The question for eBay and similarly situated companies is are these conflicts major or minor and does the value provided by the conflicted directors outweigh the detriment of the conflict. But to undertake that analysis, you first have to identify the issue.



In the case of eBay board member Scott Cook, Icahn takes issue with the fact that Cook is the co-founder and chairman of the Executive Committee of Intuit, a company with the division GoPayment, which is a similar product to PayPal. However, eBay downplays these conflicts and claims that Scott Cook is not conflicted because Intuit and PayPal are not competitors. Presumably then, Scott Cook does not recuse himself from any PayPal discussions. While we can argue all day as to the extent that the two parties compete, certainly in building the GoPayment business at Intuit it is extremely valuable to Cook and Intuit to have access to PayPal's confidential strategies. Additionally, Icahn alleges that while at eBay Marc Andreesen made investments in, and actively advised, many competitors of eBay and PayPal, including Boku, Coinbase, Dwolla and Jumio. On March 3, 2014, Andreesen responded: "I do not serve on the Board of any company with any significant competitive overlap with eBay." That does not address the potential conflict of advising such companies either now or in the past. So, if you cannot identify the conflicts, how do you address them?

Icahn also takes issue with Andreesen joining a group that acquired Skype from eBay for $2.75 billion while Andreesen was a director of eBay and then sold it to Microsoft 18 months later for $8.5 billion. To this, eBay and Andreesen respond that Andreesen recused himself from all deliberations on the Skype transaction, including all discussions, negotiations, and decisions. Andreesen states this proudly, as if this makes him a good director. He never states that this was a tough decision or that he thought hard before joining a group to buy Skype. No, he states it as if this is business as usual in Silicon Valley. Again, he can't even recognize poor corporate governance.

The most egregious part of the Skype situation is that, unlike the conflicts discussed earlier, many of which existed when the director was first elected to the Board, this is a conflict that was created solely by Andreesen after he was on the Board. When eBay sought to divest Skype, Andreesen was arguably the director who could best advise the Board on the process and the potential sale. Moreover, Andreesen did not have any prior conflict and was available to give such counsel. However, he made a conscious decision to create a conflict by joining a group bidding on Skype causing his recusal and depriving the Board of his counsel so he could potentially enrich himself. He did not work for a company that decided to

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EBAY (cont'd. from pg. 2)

bid on Skype – he owned the company that decided to bid on Skype – it was his decision. He chose his own pocket over the shareholders who elected him. Good directors try to avoid conflicts, not create them. This is poor corporate governance regardless of the outcome of the deal.

When the deal was announced to sell Skype to Microsoft, Andreesen stated in an interview that he always knew that for Microsoft and a number of other companies, Skype would be an obvious thing to buy and that they always had the fallback of selling to a strategic buyer. Clearly, he did not communicate this to eBay when he acquired Skype as he said that he recused himself from all discussions. While maybe not illegal, it is a shame when a director you elected chooses to use his knowledge to oppose you rather than advise you.

The Company defends his actions, in part, by saying he only owned 3% of the Skype deal. They don't even realize that it is not the amount of money he made that is the issue, but the conflict and how it was handled. Not to mention that an argument can be made that selling out your shareholders for a small amount is worse than selling them out for a lot of money. However, in case you did not do the math, 3% of $8.5 billion is $255 million, a great deal of money to almost anyone, including Andreesen.

The argument has also been made that Andreesen's group was able to get so much from Microsoft because they had since cut a deal with the founders of Skype to settle their intellectual property lawsuit in exchange for equity in Skype and that it was that lawsuit that prevented Skype from doing a deal directly with eBay for a higher amount. However, this settlement with the Skype founders was consummated on November 7, 2009, only two months after the sale of Skype by eBay to the Andreesen group was signed and less than two weeks before it closed. Why couldn't Andreesen help get this settlement done before the Company agreed to sell Skype to his group?

Icahn also takes issue with the fact that director Scott Cook, Intuit Founder and Executive Committee Chairman, asked eBay to not solicit Intuit employees. The fact that Cook would even ask eBay to restrict their hiring practices is problematic. That eBay agreed is incredulous. And if Cook claims that Intuit is not a competitor, why should he worry that eBay would even want his employees? Is that a con-

cern you normally see of non-conflicted directors? Mr. Cook is also on the Board of Proctor and Gamble. Did he make the same request of them? I think not and I would highly doubt they would comply. eBay's response on this issue is that it is old news and the restrictions have all been lifted. Yes, but only after a DOJ investigation into the matter, and the fact that it took a DOJ investigation to rectify this situation is evidence of a Board out of touch with corporate governance standards.

How does John Donahoe, the Company's CEO, view corporate governance? A Financial Times article on March 6, 2014 states: "Mr. Donahoe says that his business should be allowed to innovate without shareholder distractions" and "every new Silicon Valley company has a dual class of stock to prevent this issue, because innovation has a long-term time horizon." The fact that he refers to shareholders as "distractions" and applauds the dual class stock structure shows how ignorant he is on matters of corporate governance.

No company is perfect but taking corporate governance seriously, prioritizing your duty to shareholders and being able to spot corporate governance issues should be pretty basic. All of the things Icahn points out – the restriction on Intuit employees, the many conflicts, the sale of Skype - are not problems, but symptoms of the problem – poor corporate governance standards and practices that permeate the entire board and a failure to even recognize the issue.

While nothing anyone did may have risen to the level of illegality, the question is how do you want your directors to behave? Poor corporate governance acts in the past is bad enough but when a lack of corporate governance sensitivity permeates an entire board, the behavior is bound to be repeated. As Warren Buffet says, "You rarely find just one roach in the kitchen."

Carl Icahn is asking for two of eleven board seats so he can, among other things, keep an eye on the corporate governance shortcomings at eBay. He would also like the Company to separate its PayPal business, something they have consistently refused to do. If things remain the same, Marc Andreesen will continue to vehemently deny that PayPal should be split form eBay right up until the day the Board decides to divest PayPal, at which time he will stop arguing the point, recuse himself and join the group that buys PayPal. And the Company will see nothing wrong with that.

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RICHARD GROSSMAN (cont'd. from pg. 1)

corporate clients to prevent an activist from showing up at their doorstep?

RG: Advance preparation is crucial. Companies must remain active on a number of fronts to mitigate the risk of an activist surfacing and to prepare to deal with an activist that does show up.

A history of successful execution of a well-reasoned and articulated business plan is obviously important, but is not sufficient to deter activist interest. In today's world, activists also are targeting well-performing companies.

Today's fights are not won or lost with legal defenses, but rather in the arena of public opinion and with good investor relations. Accordingly, it is important that companies are fully engaged with their shareholders. Companies should make sure that their institutional shareholders are familiar with the board and management and are aware of the company's strategy to create long-term shareholder value. Ongoing engagement can establish credibility and create confidence in the board's plans for the company. Engagement also provides an opportunity for companies to hear investor concerns and address them before they develop into problems.

Companies should keep their antennae up to determine whether activist shareholders are accumulating shares. Companies should monitor who is on their investor calls, review 13F filings and maintain stock watch programs to monitor the trading patterns of their shares. Such programs can help spot unusual trading activity and determine whether activist investors are accumulating stakes.

Companies should conduct vulnerability assessments to understand whether they have a profile that would make them likely to be subject to an attack by a shareholder activist. Specifically, companies should work with their financial advisors to identify factors that might increase the likelihood of activist interest such as metrics that tend to show operational underperformance compared to peers, substantial cash on the balance sheet, a capital structure that would permit significant leverage to be added or whether there are divestible non-core assets.

13DM: Large institutional investors are becoming increasingly more receptive to supporting activist engagements. How has that changed how you advise your corporate clients when faced with an activist?

RG: That is correct. There is much more receptivity to activists today among institutional investors than historically had been the case. We have even seen some examples of institutions encouraging activists to initiate campaigns at underperforming companies in their portfolios.

This trend has made winning proxy contests more challenging for companies. As a result, companies faced with an activist who is threatening an election contest have been more willing to consider entering into settlement agreements under the right circumstances. Particularly in situations where traditional "long" institutions with large stakes are supporting change, proxy settlements can be an option that spares companies the publicity, expense, distraction and increased uncertainty of a long, drawn-out fight. In an election contest, a settlement allows the company to have some say in the selection of the new director(s), as well as which directors, if any, go off the board.

13DM: There has been a lot of debate about activists compensating their own director nominees and some companies even have adopted by-laws prohibiting the practice. How have you advised your clients on such matters?

RG: These arrangements raise a number of issues for shareholders and boards, and the area is clearly evolving. While some companies have adopted by-laws limiting nominating stockholders from paying special compensation to director candidates, that approach has been met with resistance at ISS. Last year, Provident Financial Holdings, Inc., a U.S. bank holding company, adopted a by-law that disqualified any board candidate who received compensation for agreeing to stand for election. In response, ISS recommended that shareholders withhold votes against members of Provident's corporate governance committee. Although the directors were re-elected, they received withhold votes of over 30%. Not long after this, a similar outcome occurred at the annual meeting of Rockwell Automation, which had also adopted such a bylaw. Given the potential for adverse shareholder reaction, we have advised companies to proceed with caution in this evolving area.

In recent proxy contests, we have also

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RICHARD GROSSMAN (cont'd. from pg. 4)

seen that some institutions have had a negative reaction to these special compensation arrangements for directors. The issue can distract from an activist's preferred narrative of value enhancement for shareholders. As a result, it is not clear how prevalent these special compensation arrangements will become going forward.

13DM: It seems like it is getting harder and harder for Boards to ignore precatory proposals that receive a majority of shareholder votes. What advice do you give to Boards who receive majority support for a precatory proposal? Is it ever acceptable for a Board to ignore the desires of a majority of its shareholders?

RG: Boards should carefully consider any proposal supported by a majority of shareholders. They should take appropriate steps to fully inform themselves, including consulting with their advisors, about the merits of the proposed actions. Directors should also recognize that the failure to implement a proposal will likely result in withhold recommendations for directors from the proxy advisory firms at the following year's meeting.

However, simply because a precatory proposal is approved does not mean a board must, or should, engage in or pursue the particular course of action requested in such a resolution. Directors need to exercise their fiduciary duties and judgment in managing the business and affairs of the company. Although each director should inform himself or herself about and fully understand proposals from shareholders, he or she is under no duty to implement those requests if they conflict with his or her reasoned, informed judgment as to the right course of action. That being said, a company facing that situation should have a proactive, well-articulated and credible message as to why it makes sense to not pursue the actions called for by the precatory proposal.

"As activists have continued to deliver alpha returns, institutions and pension funds are turning to activist funds as a legitimate alternative asset class, and we will likely continue to see significant amounts of capital allocated to it."

13DM: In recent years, activists have shown some success in targeting large cap companies despite owning a small percentage of the common stock (i.e., Microsoft, Apple, eBay), something that was unheard of five years ago. What do you attribute this change to and how are you advising your large and mega cap clients?

RG: No public company today, no matter what its size, is immune from an activist attack. A growing amount of capital has been allocated to activist funds in recent years. Some of the same vulnerabilities that exist in small and mid-cap companies also exist in larger companies, and activist funds now have the money to pursue them.

The increasing support from traditional long equity institutional investors permits activists to target companies without amassing as large of an ownership stake as may have once been required.

Additionally, we have seen increased media attention to activist situations, particularly in the case of larger, higher profile companies. The media can be sympathetic to the activists and that enables them to pressure large companies while only holding a relatively small percentage of the stock.

The advice to large cap clients isn't much different than to other public companies: be proactive in reviewing your business and in your shareholder relations, and be prepared.

13DM: What is the biggest thing that Boards could do to be viewed as shareholder friendly?

RG: The biggest thing companies can do is to maintain active engagement with shareholders. Today active engagement is equally or more important than action on any particular governance provision. Most of the structural devices that may not be seen by some as "shareholder friendly," such as rights plans and staggered boards, have largely been removed, especially at larger market cap companies.

The engagement process should extend beyond the proxy season. Companies should listen to concerns of shareholders and understand their perspectives. While management should take the lead in shareholder engagement, there may well be circumstances where it is appropriate for individual board members, in coordination with management, to engage with large shareholders. For

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example, if there are perceived issues relating to compensation, the chair of the compensation committee might meet with some of the large shareholders.

More and more companies are understanding the importance of this process, and efforts are being made to strengthen their shareholder relations. Companies and boards are increasingly paying more attention to, and having constructive dialogues with, their largest shareholders in order to better understand investor perspectives on performance, strategy and governance and to consider changes as appropriate.

13DM: What do you think the most pressing corporate governance issues will be over the next five years?

RG: As discussed, many large-cap companies have already removed governance features that may be labeled "unfriendly" to shareholders. Companies are increasingly declassifying their boards, adopting majority voting and allowing shareholders the right to call special meetings.

One area where we may see further development over the next few years is that of proxy access. Proxy access — the system by which a qualifying shareholder can nominate director candidates that will appear in a company's proxy materials alongside the company's nominees — can take several different forms. These vary according to the ownership and holding period thresholds required for shareholders to have access for nominees of a given percentage of the board. We are beginning to see support for a form of proxy access proposal mirroring the now-vacated SEC proxy access rule. These proposals feature a three-year holding period with a 3% threshold and a cap of 20-25% of board seats. Assuming this variety of proxy access proposal gains traction, we are likely to see more companies adopting proxy access by-laws, either voluntarily or in response to a shareholder proposal. If that happens, in the next few years we may see the beginning of proxy access election contests.

13DM: How important are the proxy advisory services in a proxy fight? Is it more important to get their recommendation if you are an activist as opposed to the company? Do you see their influence rising or decreasing over the next ten years?

RG: Proxy advisory firms continue to be very important. They often can significantly influence 15-20% or more of the vote in a proxy contest. Although recently we may have seen some evidence of their influence waning slightly, they continue to play an important role in any contested solicitation.

There is no single answer to whether the recommendation of advisory firms is more important to activists or companies. Each situation is unique and depends on a company's shareholder base, their voting preferences, the company's history of engagement and other factors. Generally, though, it should be seen as equally important for both sides to garner the support of the proxy advisory firms.

We may see a slight decrease in the influence of the proxy advisory firms over the next ten years as shareholder engagement increases and more institutional investors make their own voting decisions in contested situations without relying on the proxy advisory firms. Nevertheless, I believe that the advisory firms will continue to remain an important factor in any contested solicitation.

13DM: What developments have you seen in activists' tactics and approaches?

RG: We have seen activists become much more sophisticated in recent years. They are issuing white papers focused on operational improvements and are making financially-based arguments. They are recruiting more credible director candidates, including using executive search firms. The candidates often are knowledgeable in the industry and reputable — and not simply fund representatives. Activists are also hiring experienced financial, legal, public relations and proxy advisors. As a result, shareholder activists tend to pose a more serious threat to the companies they target than was the case several years ago and accordingly companies should conduct a vulnerability assessment and develop robust policies on shareholder engagement to mitigate such threats.

13DM: Do you see the level of shareholder activism increasing or decreasing over the next five to ten years and any trends that you foresee?

RG: Activism will likely continue at its current level and perhaps increase. As activists have continued to deliver alpha returns, institutions and pension funds are turning to activist funds as a legitimate alternative asset class, and we will likely continue to see significant amounts of capital allocated to it. As a result, this type of investing is unlikely to go away in the future.

We are also seeing a number of newer, what I call "son of activist," funds being formed. These are new funds run by individuals who previously worked for and learned their trade from a well-known activist such as Carl Icahn or Bill Ackman. The individuals running these funds are experienced, and they are looking to make their mark in the activism space.

While some of the easier targets may have already been identified, there will always be situations where activists believe they can pressure a company to unlock value.

13D DISCLOSURE PERIOD (cont'd. from pg. 1)

of these two articles on March 26 entitled "Activist Investors Often Leak Their Plans to a Favored Few."

Among other inaccuracies, biases and unsubstantiated statements, the article talks about "bearish activism" and states that activists make vigorous public arguments about the target company, pro or con. Let's get something straight – there is no such thing as "bearish activism". It might sound cool and sell papers but it is a complete oxymoron and does not exist. Shareholder activism is when an investor: (i) buys shares of a company's stock and (ii) tries to influence management. Moreover, while arguments can be made as to whether all shareholders have the same time perspectives and whether the activist's suggestions are more for a short term benefit than a long term benefit (to be discussed later), in shareholder activism, the activist only benefits if the stock goes up and in that sense his interests are completely aligned to other shareholders. When somebody takes a public short position (i.e., Pershing Square in Herbalife), they are neither shareholders of the company nor trying to influence management, and their interests are completely averse to the shareholders of the company. They are using their public comments to convince the market that the company is overvalued or, in some cases, convince regulators to take action against what they believe to be corrupt practices. Just because an activist investor may also sell short from time to time does not make short selling an activist strategy regardless of how public he is about it.

The crux of the Wall Street Journal article was focused on long and short "activists" who "leaked" or tipped off other investors about their position before going public with it. The terminology used in the article clearly has a derogatory tone. Why not use the word "discuss" instead of "leak". Portfolio managers, activist or passive, commonly discuss their positions and potential positions with other portfolio managers within and outside of their firm. Moreover, it is even more important for activists to have such discussions to get a sense of shareholder sentiment. Is the article suggesting that only passive investors should be able to discuss their portfolio positions?

The article acknowledges that there is nothing illegal about this and even quotes a corporate lawyer who defends companies against activists as saying that this is premarketing and part of their campaign. However, the lawyer goes on to say that the activists use the pop in the stock price to help "pay these people" for being on their side in a battle against the company. This statement not only disparages activists but is completely denigrating to shareholders in general by implying that their votes can be bought. Moreover, it is totally inconsistent with the theory of activist defense lawyers that most non-activist shareholders are long term investors – investors who would not care about a temporary pop in the stock. Yet, the Wall Street Journal offered absolutely no support to corroborate such an inflammatory statement.

The four Wall Street Journal writers could only find one relevant SEC probe with respect to tipping off other investors and potentially acting as a group, but fails to clarify that this situation does not involve an activist investor, despite the title of the article. Moreover, the article qualifies the term "activists" with "some of whom might have been called corporate raiders in the past." Why is that relevant other than to draw a negative connotation. More importantly very few activists of today were ever considered corporate raiders. Other than Carl Icahn, I am not sure who they are referring to.

On the very next day the Wall Street Journal published another article entitled "SEC is Urged to Shorten Window for Investor Tip-Offs". First of all, to imply that the 10 day window to file a 13D after acquiring more than 5% of a company's stock is at all related to "tipping off" investors is completely irresponsible. Let's recap: (i) the : "tip-offs" they discuss are commonplace among active and passive investors, (ii) they are not illegal, (iii) the one SEC probe they mentioned had nothing to do with an activist and none of the participants were 13D filers and (iv) the one activist "tip-off" they mention did not even involve a 13D. Moreover, it is not like an activist needs ten days to "tip-off" another investor, such a conversation takes about 30 seconds. The most comical part of this article is that it cites its own "Wall Street Journal Investigation" from the article on the previous day as the reason for such action by lawmakers, when in reality the SEC has been considering this for years.

The article frequently alludes to the "secret" accumulation of securities by activists as if activists acquire their positions covertly but other investors (i.e., mutual funds) loudly alert the markets whenever they take a new position. Even if the "secret" accumulation of stock by activists was a problem, shortening the ten day period would do nothing to rectify this. An activist would still be able to "secretly" acquire 5% of a company's stock. It would just limit how much they could acquire before filing a 13D if they choose to go over 5% (contrary to the statements in the Wall Street Journal articles, 13Ds are required if an investor exceeds 5%, not acquires 5%). Moreover, shortening the ten day period would have absolutely no effect on short selling, the other main focus of the Wall Street Journal article. While lawmakers are discussing shortening the ten day filing window for 13Ds, it has absolutely nothing to do with the fictional "tip-off" issue created by the Wall Street Journal a day earlier.

One argument is that with today's tech-

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nology, the 13D disclosure can be made much quicker and does not require ten days. However, there is no evidence to support that the 10 day period was chosen in response to technological limitations at the time. It was more likely a period used to strike a balance between shareholders and management and to be sensitive to the confidential nature of securities holdings like the other filing requirements of Section 13.

13F filings which essentially disclose the holdings of funds with greater than $100 million of domestic equity assets are filed 45 days after each calendar quarter yet nobody is advocating that these filings should be made sooner. Certainly technology would allow for those holdings to be disclosed within one business day.

13G filings are the passive counterpart to 13D filings – filed when an investor acquires more than 5% of the company but does not intend to influence management. Most 13G filing are not required to be filed until 45 days after the end of each calendar year and then only if the investor held more than 5% of the stock on December 31 of the applicable year. Said another way, under current law, a passive investor can acquire 9.9% of a company's stock on January 1, 2014 and not have to disclose such ownership in a 13G filing for more than a year - until February 15, 2015. Or, they could sell that position on December 30, 2013 or any time prior to the end of the year, and never have to file a 13G. But nobody is screaming to shorten this time period. It is only the activists they are focusing on. 13Ds must be filed within 10 calendar days after exceeding 5% ownership, the shortest filing period by far under Section 13, and this is the rule that lawmakers are clamoring about.

The real issue, as initially articulated by activist defense professionals over a year ago, is do activist investors take advantage of the 10 day window to increase their ownership significantly above 5% before disclosing their position. Last year there were 1,463 13D filings, most of which were routine or technical in nature. At 13D Monitor we follow activist 13D filings on companies with greater than $100 million market capitalization. Last year there were 83 such filings on 78 different companies. So 78 of the approximately 4,000 public companies with a market capitalization greater than $100 million, or less than 2%, were targeted by activists in 2013.

Since April 1, 2006 when we first started following 13D filings, there have been 577 activist 13Ds filed by hedge funds that were not conversions from 13G filings and where the activist acquired its position in the public market (i.e., excluding spin-offs, mergers and private sales). The average position of the activist in those 577 13D filings was 6.9%, with only 29 of the 577 13D filings disclosing more than 10% ownership. That is 29 activist 13Ds by hedge funds over an eight year period, or less than four a year, where the activist used the ten day period to go from 5% ownership to over 10% ownership. Is this something that the SEC should be spending its valuable resources on?

Assuming that you believe that even this low level of activity justifies shortening the 10 day period, it is certain that any shortening of the period will make activism less attractive as a strategy. So the next question is should regulators discourage or encourage shareholder activism? It is pretty much undisputable that activism generally leads to outperformance during the 13D holding period. There are tons of academic and empirical studies, as well as our data at 13D Monitor, to support that notion. That is why activism is such a popular strategy. There are even studies that say that activism continues to add value for years after the activist exits its position. But activist opponents anecdotedly claim that activists are short term investors and activism leads to short term gains at the expense of long term investors. Let's analyze that allegation.

In the 900 activist 13D filings 13D Monitor reported on since April 1, 2006, the average 13D holding period has been 2.01 years. That is just the period between the activist exceeding 5% and exiting its 13D by going below 5%, converting to a 13G or otherwise. It does not include the holding period of the activist before it went above 5% or after it exited its 13D but still held its position. And it includes 13Ds filed within the last several months where the holding period is short because the activist just acquired its position. So, the average activist holding period is significantly above two years.

On the other hand, according to William Harding, an analyst with Morningstar, the average turnover ratio for managed domestic stock funds is 130 percent, implying less than a 1 year holding period. Bill Barker of Motley Fool says "Managed mutual funds have an average turnover rate of approximately 85%, meaning that funds are turning over nearly all of their holdings every year." And Kiplinger says: "The typical stock mutual fund has a turnover rate of 100% -- which means that, on average, it holds stocks for about a year." So why is it that large mutual funds are considered long term investors with holding periods of 4+ years?

The reason is that mutual fund complexes like Fidelity, Blackrock, Vanguard, etc. consist of hundreds of different portfolio managers, each making independent buy and sell decisions. Their 13F, 13G and 13D filings aggregate the holdings of all of these portfolio managers giving the appearance that they are holding a stock for many years but actually this is many short, medium and long term portfolio managers buying and selling the stock of the same company. So, the portfolio managers that hold IBM in 2013 may be totally different from the portfolio managers that hold the stock in 2018 but the

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13D DISCLOSURE PERIOD (cont'd. from pg. 8)

overall mutual fund complex would still be reporting continuous ownership of the stock during the five year period. Factor in index funds, who have to hold certain stocks without making any investment decision and this dynamic is magnified. This is not to say that there are not some long term shareholders that hold positions for 5+ years and there are not some investors, including activists, who are very short term minded. But to generalize activists as "short termers" and mutual funds as long term investors is a complete distortion of the truth, and their time horizons are likely more similarthan people think.

If there really were the large chasm between activists and mutual funds with respect to their investment horizons that activist opponents would lead you to believe, how is it that activists are getting an increasing level of support from mutual funds? The truth is that this long term/short term distinction is significantly overblown and not an issue for institutional investors. Yes, there are some activist agendas that are short term minded that could hurt the long term prospects of the company. But institutional investors understand that a short term fix to a company could have a long term benefit. After an activist agenda is implemented, it does not matter if the activist continues to hold the stock for a day or a decade if the company was put on a better long term trajectory. Moreover, these activist agendas cannot get implemented without the majority support of the other shareholders, most of whom are large institutional investors. These sophisticated investors analyze the proposals of activists and management and make a case by case decision, refusing to support the activist if they believe its agenda is not consistent with their investment horizon. These institutional investors generally have no problem with the 10 day 13D period and do not need to be protected from activists. Most of them would much rather operate in a market where activism exists.

So who are we trying to protect by shortening the 13D filing period? It is clearly not a technological issue or a disclosure issue because no one is proposing to shorten the other, longer section 13 holding periods. The answer is that the rule would only protect management, but not all management – just underperforming management. This is an issue between activists and management and the proposals to shorten the 10 day period are supported by activist defense professionals whose interest it is in to discourage activism. The truth of the matter is that less than 2% of public companies are engaged by activists in any year, and who out there can say that there are not 2% of companies with poor management or in the need of strategic, operational or financial guidance. Moreover, the preponderance of studies and analyses conclude that activism has a positive effect on the underlying companies. The SEC has many serious and chronic issues to address. The length of the 13D period is not one of them. Yes activism is growing and becoming more accepted, but that does not mean the SEC should limit this growth by shortening the ten day period. When it comes down to it, there is already a limit on the expansion of activism – shareholders. They have the ability in each activist situation to decide whether the activist is right or management is right. What is better than that?

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New Filings for March

Company Name	Investor	Mkt. Cap.	Filing Date	%	Cost	Item 4 Action
PRGX Global (PRGX)	Becker Drapkin	$186.69M	3/6/14	6.30%	$6.39	n/a
BJ's Restaurants (BJRI)	PW Partners	$784.30M	3/6/14	12.40%	$30.34	nominated directors
Boyd Gaming (BYD)	Elliott	$1.27B	3/10/14	4.99%	$11.17	n/a
Penn Virginia Corp. (PVA)	Soros	$927.54M	3/18/14	9.18%	$4.84	explore alternatives

One to Watch

Company

URS Corp.: (URS)
Market Cap.: $3.40B ($45.41/share)
Enterprise Value: $5.08B
Cash: $314.20M
Debt: $2.00B
EBITDA: $742.60M

Investor

JANA Partners, LLC
13F Holdings: $7.91B
# of 13F Positions: 44
Largest Position: $648.85M
Avg. Return on 13Ds: 32.28%
Versus S&P500 avg: 11.19%

Investment

Date of 13D: 2/27/14
Beneficial Ownership: 9.70%
Average Cost: $47.46
Amount Invested: $345.92M
Highest price paid: $52.98
# of larger shareholders: 1

This is a little different than the normal activist situation for JANA because it initially started out as a passive 13G investment that they converted to a 13D after the Company announced financial results. The Company's stock price as a result is down 14% already this year. As JANA alludes to in their filing this is an amicable engagement at the moment and the Company agreed to extend the deadline for stockholders to nominate directors to the Board at the 2014 Annual Meeting from February 22, 2014 to March 14, 2014 so they can continue amicable negotiations with JANA. The Company provides engineering, construction and technical services in the oil and gas, federal, infrastructure, industrial and power industries. It had an enterprise value of $2.5 billion in 2006 and has generated $1.5 billion of free cash flow since then and did $5.3 billion in M&A. However, their enterprise value today is only $5.1 billion having squandered a great deal of shareholder value. The silver lining to this is that the Company now has many separate businesses that have not been integrated and strong cash flow significantly in excess of its earnings because of substantial depreciation and amortization from all of its acquisitions. Moreover, it is expected that long time Chairman and CEO Martin Koffel will retire this year and the Company's President and Chief Operating Officer, Bill Lingard, was to be his successor. However, Lingard resigned on February 10, 2014. So, the activist opportunities here are to use the large amounts of free cash flow to buy back stock, divest some of the business segments that have not been working out and/or taking advantage of the free cash flow to sell or LBO the entire Company. On March 13, 2014, JANA and the Company entered into an agreement pursuant to which, the Company agreed to, among other things, increase the size of the Board to fourteen members and appoint Diane C. Creel, William H. Schumann, III, David N. Siegel and V. Paul Unruh (collectively, the "JANA Nominees") to fill the vacancies created by the foregoing increase in the size of the Board. JANA agreed to vote in favor of the current Board at the 2014 Annual Meeting and to abide by customary standstill provisions, including not acquiring more than 14.9% of the Company's stock.

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UPDATE

On March 26, 2014, Barington sent a letter to the independent directors of Darden calling upon them to take the following actions: (i) appoint an independent chairman, (ii) directly engage in a meaningful dialogue with shareholders, (iii) permit shareholders to vote on the Red Lobster separation plan, (iv) reconsider the current restructuring plan and explore opportunities to unlock the value of the Company's real estate assets, (v) ensure that shareholders receive full and fair disclosure, (vi) improve the Company's corporate governance, and (vii) consider beginning a search for a new CEO. Barington believes the Company needs a new CEO who has exceptional operating and management skills in the restaurant industry, who has the background and experience to run the Company no matter how it may be restructured in the future.

UPDATE

On March 19, 2014, Dow Chemical told investors that it plans to sell an additional $1.5 billion to $2 billion of assets this year.

UPDATE

On March 19, 2014, Icahn called on eBay to sell 20% of PayPal in an initial public offering (even though he initially called for a complete spinoff). Icahn believes conducting a 20% IPO would provide the best opportunity for the businesses to remain competitive over the long-term. He also noted that the 20% IPO structure should alleviate any concern of lost synergies, could preserve all of the benefits of keeping PayPal in-house and could be structured to be tax free to shareholders.

UPDATE

On March 11, 2014, Microsoft Corp. appointed Mason Morfit of ValueAct Capital, as a board member.

UPDATE

On March 13, 2014, Trian sent a letter to Pepsi's Board calling on it to provide shareholders with analytical support for the Company's continued reliance on the "Power of One" strategy and its rejection of Trian's recommendation to separate global snacks and beverages into two independent public companies.

SEE ONGOING SITUATIONS ON FOLLOWING PAGE

UNDER THE THRESHOLD - ONGOING SITUATIONS

On December 3, 2013, **Engaged Capital** sent a letter to the Board of **Abercrombie & Fitch. Co (ANF)** urging them not to renew CEO Jeffries' employment agreement when it expires on February 1, 2014 and to immediately commence a CEO search for candidates with relevant retail apparel and turnaround experience. Engaged believes that the Company's continuing underperformance is a result of a failure of leadership. Engaged notes that management's strategy of investing hundreds of millions of dollars to expand the Company's domestic footprint has resulted in a materially overbuilt U.S. store base which has led to years of store closures and asset impairments. Engaged also notes management has pursued the same "spendthrift capital allocation discipline" internationally through a high-risk flagship store strategy which has saddled the Company with costly and underperforming stores in Europe and Japan. Also, Ruehl and Gilly Hicks, the Company's two newest brands were costly failures. Altogether, according to Engaged, investors have suffered through asset impairments and operating losses of over $500 million during the past six years alone, operating margins that have deteriorated from over 21% in 2007 to below 5% today, and return-on-capital declined from over 20% to levels below the Company's current cost-of-capital. While Engaged believes that investors should benefit from recently announced expense reductions of over $130 million in fiscal 2014, they note these changes are coming a full six years after margins and returns drastically declined. In the letter, Engaged discusses that the Company's management team has a reputation for habitually underestimating and under-executing on the changes needed to remain competitive in the fast moving teen apparel market. Since 2000, the Company has only generated positive same-store-sales five times while experiencing material declines in eight of the last fourteen years, and over this time period, compounded same-store-sales have declined by 41%. However, Engaged notes the Company still maintains brands with domestic and international appeal, a highly profitable direct-to-consumer business, and significant cash flow generation potential. The Company has consistently been cited as an attractive target for private equity investors, and Engaged believes a sale may be the best option for shareholders. Engaged is concerned that the Company has not identified any internal successors to Mr. Jefferies and believes the renewal of Jeffrie's employment contract would be a direct contradiction to what the Company needs and what shareholders want. Engaged points to the say-on-pay voting results of the Company's recent annual meetings as evidence of shareholder unrest. Shareholder support for ANF's say-on-pay proposals was 56%, 25%, and 20%, for 2011, 2012, and 2013, respectively, versus an average approval rating for say-on-pay proposals in the S&P 500 of approximately 90% in each of the past three years. Despite activist pleas to retain a new CEO, on December 9, 2013, the Company entered into a new and restructured employment agreement with Michael Jeffries. The new contract pays a base salary of $1.5 million a year, to be reviewed annually. He will have an annual target bonus opportunity of 150% of his base salary and a maximum bonus opportunity of up to 300% of his base salary. In the new agreement, he is eligible to receive long-term incentive awards each year with a target value of $6 million. Also, he will be entitled to use, for security purposes, the Company's aircraft for up to $200,000 of personal travel.

On January 28, 2014, Abercrombie announced that it appointed Arthur C. Martinez (appointed as Non-Executive Chairman), Terry Burman, and Charles R. Perrin to its Board. Abercrombie also announced separating the roles of Chairman of the Board and CEO. Michael Jefferies, who served as Chairman since 1996, will continue to serve as a director and as the Company's CEO.

On February 20, 2014, Engaged Capital announced that it has nominated the following individuals for election to the Board of Abercrombie at the upcoming 2014 Annual Meeting: (i) Alexander P. Brick, former Chief Executive Officer of Specialty Retail Group; (ii) Robert D. Huth, former Chief Executive Officer of David's Bridal; (iii) Michael W. Kramer, former Chief Operating Officer of J.C. Penney; (iv) Diane L. Neal, former Chief Executive Officer of Bath & Body Works; and (v) Glenn W. Welling, CIO & Managing Member of Engaged Capital. Engaged states that despite governance improvements (instituted only after stockholder pressure), the Board still lacks a majority of qualified, independent voices. Engaged also notes that this public nomination follows the failure of weeks of private outreach to the Board to arrive at a negotiated settlement, which Engaged believes proves the incumbent directors' unwillingness to put the interests of the Company's stockholders ahead of their own interests.

On August 13, 2013, **Icahn** tweeted [@Carl_C_Icahn]: "We currently have a large position in **APPLE**. We believe the company to be extremely undervalued. Spoke to Tim Cook today. More to come." Icahn believes that the Company should buy back $150 billion of its common stock. Icahn says that they can do this by borrowing the money at less than 3%, a unique opportunity, and they would still have a ten times interest coverage ratio and $146 billion of cash on the balance sheet, a portion of which would have to be repatriated if necessary. Icahn believes that a tender offer at $525 per share could result in a $625 stock price if the P/E ratio remains the same and assuming earning do not

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increase, and he believes they will. In three years, Icahn expects shares to appreciate to $1,250, assuming the market rewards EBIT growth of 7.5% per year with a more normal market multiple of 11x EBIT. Icahn had dinner with Tim Cook and conveyed his recommendation to him. Icahn had since increased his position in Apple to $2.5 billion with intentions to buy more. To invalidate any criticism that he would not stand by his thesis in terms of its long term benefits to shareholders, he states that he would withhold his shares from the proposed $150 billion tender offer. Icahn also said that he would explore running a proxy fight if necessary. On December 4, 2013, Icahn announced that he will submit a precatory proposal to Apple's shareholders at the Annual Meeting, calling for a $50 million buy back in stock.

On January 23, 2014, Carl Icahn reported that he bought another $500 million of Apple's stock, bringing his total investment to $3.6 billion. Icahn also reported that he sent out a seven page letter to the Company's shareholders discussing why buyback should be markedly increased. In the letter, he states his belief that the combination of Apple's unprecedented net cash balance, robust annual earnings, and tremendous borrowing capacity provide more than enough excess liquidity to afford both the use of cash for any necessary ongoing business-related investments in addition to the cash used for the increased share repurchase proposed by Icahn. Icahn believes Apple will be able to participate in this growth without sacrificing pricing and gross margins, especially with its competitors, because of the continuing loyalty of Apple's growing customer base. He further states that as software and services improve and become even more important to consumers in the future, he thinks customer loyalty will strengthen even more. Icahn discusses the scale of opportunity that stems from new products in new categories (which he believes Wall Street analysts lack in their financial projections), including the possibility of an Apple TV, opportunities in hardware alone (i.e. rumors of a smartwatch) and a next generation payments solution. Icahn responds to a potential argument that with so much opportunity, the Company should maintain excess liquidity to increase R&D or make acquisitions, by stating that even after taking such factors into account, he believes tremendous excess liquidity remains. While comparing Apple to Microsoft, its next largest competitor, Icahn notes that Apple has $68 billion more net cash and is expected to generate $18 billion more in earnings during 2014. He also notes that since much of the Company's cash and earnings are international and subject to a repatriation tax if returned to the US to repurchase shares, Apple should simply borrow the money in the US to the extent it deems its domestic cash of $36 billion and domestic earnings are insufficient. Icahn believes this is one of the greatest examples of a "no brainer" he has seen in five decades.

On February 6, 2014, Tim Cook stated in an interview that Apple has recently bought $14 billion of its own shares. In a letter on February 10, 2014, Icahn stated that while he is disappointed that ISS recommended against his proposal, he does not altogether disagree with ISS's assessment and recommendation in light of the recent actions taken by the Company to repurchase shares. Icahn states that in light of these actions and ISS's recommendation, he seeks no reason to persist with his non-binding proposal, especially when the Company is so close to fulfilling his requested repurchase target.

DARDEN

On October 17, **Barington Capital** announced that they represent a group of shareholders that owns over 2% of the outstanding common stock of **Darden Restaurants, Inc.(DRI)** and sent a letter to the Board on September 23, 2013 making recommendations to improve the financial and share price performance of the Company. Barington points out in their letter that while the Company has outperformed its peers between 1999 and 2008, it has performed poorly against its peers since then. Barington's recommendations include: (i) forming two independently managed restaurant operating companies – one for Darden's mature brands (Olive Garden and Red Lobster) and one for its higher-growth brands (LongHorn Steakhouse, The Capital Grille, Yard House, Bahama Breeze, Seasons 52 and Eddie V's Prime Seafood); (ii) exploring all alternatives to monetize the value of the Company's real estate assets, including the creation of a publicly traded real estate investment trust (REIT); and (iii) reducing operating expenses by bringing Darden's cost structure in line with the Company's better performing peers. Barington cites McDonalds, Brinker international (Chili's) and Lone Star Funds (Del Friscos) as three companies that have divested non-core brands resulting in the creation of significant shareholder value. Barington also states that Darden owns more real estate than its peers and estimates its real estate assets are worth approximately $4.2 billion. Moreover, Barington believes the Company can reduce its operating expenses by $100 - $150 million per year. Barington believes that if its first two suggestions are fully implemented, Darden's common stock would trade between $69 and $76 per share without taking into consideration any positive impact of operating improvements or further reduction in operating expenses. On November 21, 2013, Barington Capital Group, L.P. announced that it retained Houlihan Lokey to undertake an independent review of Barington's recommendations for Darden to improve the long-term performance of the Company.

UNDER THE THRESHOLD - ONGOING SITUATIONS

On December 17, 2013, Barington released a detailed presentation setting forth its recommendations to improve long-term value at the Company. The report states that if Barington's recommendations were fully implemented, the Company's common stock would be valued between $71 and $80 per share (higher than Barington's earlier estimate of $69-$76 per share). In the presentation, Barington recommends that the Company explore each of the three following recommended actions: (i) create two focused restaurant companies to improve execution and operate each company to best meet the unique needs of its brands; (ii) unlock the value of the Company's extensive real estate assets – Barington believes a publicly traded REIT would provide shareholders with the most immediate and tax efficient path to unlock the value of the Company's real estate assets; and (iii) reduce operating expenses – Barington believes the Company has numerous avenues to lower operating expenses by up to $100-$150 million and substantially enhance earnings. The full implementation of Barington's Plan would result in investors receiving shares in three separate companies: (a) Darden-Mature: this would consist of Olive Garden and Red Lobster, where the Company could focus on restoring the "crown jewels" of casual dining; (b) Darden-Higher-Growth: this would consist of Bahama Breeze, Capital Grille, Eddie V's Prime Seafood, LongHorn Steakhouse, Seasons 52 and Yard House, and would allow the Company to build on existing growth trajectory with added brand-level agility; and (c) Darden Reit: where the Company could unlock substantially underappreciated real estate value for shareholders. Barington conservatively estimates the value of the Company's fee owned and ground leased real estate to be $4 billion (before leakage costs), which Barington does not believe to be fully reflected in the Company's current stock price.

On December 19, 2013, Darden announced a plan to enhance shareholder value including selling or spinning-off Red Lobster. Darden also announced it would reduce unit growth, lower capital expenditures and forgo acquisitions. This will come primarily from suspending new unit growth at Olive Garden and more limited new unit growth at LongHorn Steakhouse. This reduced unit growth will lower capital spending by at least $100 million annually. Also, the Company will forgo acquisitions of additional brands for the foreseeable future. Darden also stated there will an increase to its cost savings and an increase in return of capital to shareholders. Finally, Darden announced that the Board intends to refine compensation and incentive programs for senior management to more directly emphasize same-restaurant sales growth and free cash flow.

On December 23, 2013, Starboard filed a 13D and reported that it believes that opportunities exist within the control of the Company's management and the Board to take actions that would create significant value for the benefit of all shareholders. Specifically, Starboard believes there is a significant opportunity to dramatically improve the operating performance at the Company, as well as opportunities to realize substantial value from the Company's real estate holdings and to explore other strategic options available to the Company to maximize shareholder value, including alternative business sale or separation transactions. Starboard believes that the plan outlined by management falls significantly short of the actions required to maximize shareholder value.

On January 13, 2014, Barington stated it was disappointed with a recent plan by Darden to spin off Red Lobster to enhance value. Barington stated that it was especially disappointed that the Company's plan failed to unlock value from the Company's real estate holdings. On January 30, 2014, during a conference call Barington hosted for investors, James Mitarotonda stated that he is "reserving judgment" on whether Clarence Otis should remain CEO of the Company. Mitarotonda continues to remain hopeful that Otis will reconsider the suggestions that Barington and Starboard have made, but that an independent chairman would be best for shareholders. Darden cancelled its analyst and investor meeting scheduled for March 28.

On January 21, 2014, **Third Point** disclosed in an investor letter that its largest current investment is in **The Dow Chemical Company**, but did not disclose its stake. Third Point notes that the Company's shares have "underperformed over the last decade, generating a return of 46% (including dividends) compared to a 199% return for the S&P 500 Chemicals Index and a 101% return for the S&P500." Third Point believes these results reflect a poor operational track record across multiple business segments, a history of under-delivering relative to management's guidance and expectations, and the ill-timed acquisition of Rohm & Haas. Third Point states that the Company's lacking performance is even more surprising given that the North American shale gas revolution has been a powerful tailwind for the Company's largest business exposure – petrochemicals.

Third Point believes the Company should engage outside advisors to conduct a formal assessment of whether the current petrochemical operational strategy maximizes profits and if these businesses align with the Company's goal of becoming a "specialty" chemicals company. Third Point also believes the Company should apply the "intelligent logic" of its recently announced chlor-alkali

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separation to the entirety of its petrochemical business by creating a standalone company housing the Company's commodity petrochemical segments.

On February 11, 2014, Dow Chemical filed an addendum to its fourth quarter and full-year 2013 earnings teleconference materials stating that it has conducted an evaluation as part of a review of the Company's strategic option. The review found that "a break-up of the Company in a significant manner (simplistically described as petrochemical and specialty chemical assets) created no productivity or capital allocation improvements, but rather negatively impacted Dow's value proposition which leverages scale, integration costs and technology benefits across multiple science-based, vertically integrated value chains." On February 12, 2014, Dan Loeb said that the Company's "lack of transparency" makes it difficult to determine whether the Company should be split up or kept together. In Third Point's statement, it said it has hired financial advisers of its own to look into the Company's options and is prepared to sign a non-disclosure agreement to see how the Company came to decide against Third Point's plan.

In August, **Trian** disclosed that it owned 21 million shares of **DuPont Co.** (valued at $1.25 billion). Trian had met with Chairman/CEO Ellen Kullman and other senior managers to talk about their ideas outlined in a white paper. It was predicted that Trian was proposing breaking DuPont into two companies, one focused on its agriculture business and the other focused on materials. On October 24, it was announced that DuPont was splitting in two, spinning off its performance chemicals segment into a new publicly traded company. The unit — which makes a pigment that turns paints, paper and plastics white, as well as refrigerants and polymers for cables — generated about $7 billion in revenue in 2012. DuPont had announced in July, prior to Trian's involvement, that it would explore "strategic alternatives" for the unit and stated that its decision came after a thorough strategic review process over the last year. DuPont expects the spinoff to be completed in about 18 months, and said it would be tax-free to shareholders, who will receive stock in the new company. The DuPont that remains will have three main areas of focus, each trying to make products that address global population growth. Its agriculture business will develop and produce seeds and herbicides aimed at increasing crop yields around the globe. A bioindustrials unit will be involved in the production of biofuels in an effort to reduce the world's reliance on fossil fuels. And an advanced materials segment will make components for green buildings and solar panels, as well as products like Kevlar.

Icahn has taken a stake in **Ebay**, proposed a spin-off of Ebay's PayPal division and nominated two directors to the Board of the Company. EBay indicated it does not agree with Icahn's plan to spinoff PayPal. On February 24, 2014, Icahn sent a letter to Ebay's stockholders criticizing directors Marc Andressen and Scott Cook for, among other things, directly competing with the Company, funding competitors, and putting their own financial gain in ongoing conflict with their fiduciary responsibilities to stockholders. Icahn also states that the Company's CEO, John Donahoe, seems to be "completely asleep or, even worse, either naive or willfully blind to these grave lapses of accountability and stockholder value destruction." Icahn questions his judgment and ability to make decisions that must be made concerning the future of PayPal. Icahn believes separating eBay and PayPal will: (i) highlight the significant value of the disparate business currently shrouded by a conglomerate discount the market has afforded eBay; (ii) focus and empower independent management teams to most effectively build two very different business platforms, make economic decisions independent of each other, and, foster innovation; and (iii) provide an even more valuable currency for future bolt-on acquisition opportunities and for recruiting the top talent necessary for PayPal to remain the market leader in payment technology. Icahn urges shareholders to vote for his slate of directors and for his precatory proposal in order to send a clear message to the Company's Board that it should be separated from PayPal.

On February 27, 2014, Pierre Omidyar, Ebay Founder and Chairman, rejected Icahn's call to separate the Company's PayPal unit, saying the businesses were better off together. On March 3, 2014, Icahn reiterated his view that Andressen has conflicts of interests. He also stated that he is in the process of demanding the Company's books and records. On March 5, 2014, Icahn stated that the corporate governance at the Company is the worst he's ever seen.

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UNDER THE THRESHOLD - ONGOING SITUATIONS

Sandell Asset Management, which reportedly owns about 3% in **FirstGroup Plc**, sent a letter to the Company urging it to sell its U.S. businesses in order to pay down debt. Specifically, Sandell asked the Company to consider the sale of Greyhound and its school bus division. Sandell stated in the letter that its proposals would help lift the Company's shares to 199 pence.

On January 15, 2014, Sandell published a white paper detailing the operational and financial benefits of the "Sandell Plan". Sandell believes the following steps would immediately unlock value for shareholders at FirstGroup and improve the likelihood of a successful turnaround, while allowing shareholders to benefit from any future improvement in underlying performance: (i) spin-off First Student and First Transit (together "FirstGroup US"), targeting the yield-hungry North American shareholder base willing to pay a premium for FirstGroup US' cash flows; (ii) sell Greyhound, a relatively small non-core asset, following the spin-off of FirstGroup US, to focus management attention on the Company's UK businesses; and (iii) strengthen the balance sheet of UK Bus and UK Rail (together "New FirstGroup") through proceeds from Steps 1 and 2 to better prepare the Company for the upcoming UK rail franchise bids and to invest in the operational turnaround of the UK Bus business.

Sandell states that since the public disclosure of the Sandell Plan, it is disappointed that the Company characterized the Proposals as containing "structural flaws" and "inaccuracies," but believes the Company's rejection was premature without fully appreciating the rationale behind the proposals. Sandell notes that the Sandell Plan does not replace a sound turnaround plan, but instead, its proposals would be best carried out in conjunction with such a plan to improve the plan's chances of success and to provide additional flexibility should a turnaround fail to materialize in the anticipated timeframe. Although Sandell believes that the basic tenets behind the Company's strategic plan are sound, Sandell remains concerned about its execution. Sandell states that its Plan is designed to address what it believes is the key reason behind the Company's consistently poor execution, namely the Management team's inability to manage the increased complexity of the business since the acquisition of Laidlaw International Inc.

On February 4, 2014, **Sachem Head Capital Management** sent a letter to the **Helen of Troy** expressing its belief that, given the Company's underperformance, it should undertake a full review of strategic alternatives to explore opportunities to maximize shareholder value. Sachem Head also states that it has specific knowledge of at least one inquiry to the Board in the past two weeks from a well-respected company with financial resources and a proven acquisition track record that was rebuffed, and that it has reason to believe that there may have been similar approaches from others. Specifically, Sachem Head believes the Board should take the following actions: (i) run a full sale process and vet any legitimate offers for the Company and (ii) if a full and legitimate review of strategic alternatives fails to result in a sale of the Company, Sachem expects management to optimize the Company's balance sheet to maximize value. On February 10, 2014, the Company announced that the Board has authorized the repurchase of $550 million of its outstanding common stock in keeping with its stated intention, first noted in April 2013. The Company stated that on February 10, it will commence a modified "Dutch Auction" tender offer to purchase up to $300 million of its common stock, subject to certain terms and conditions, and plans to initiate a subsequent repurchase of an additional $250 million of its common stock over the next three years, at times and prices to be determined.

On January 29, 2013 **Elliott Associates** announced that they own 4.0% of the common stock of **Hess Corp (HES)** and were nominating a slate of the following five independent directors to the Company's 14 person Board: (i) Rodney F. Chase - Former Deputy Chief Executive, BP plc; (ii) Harvey Golub - Former Chief Executive Officer, American Express Company; (iii) Karl F. Kurz - Former Chief Operating Officer, Anadarko Petroleum Corporation; (iv) David McManus - Former Executive Vice President, Pioneer Natural Resources Company; and (v) Marshall D. Smith - Chief Financial Officer, Ultra Petroleum Corporation. Upon receipt of notification of Elliott's intention to nominate directors, Hess announced an exit from its refining and terminal business. Elliott views this as a minor step and believes that the strategic, capital, organizational and corporate governance problems at the Company go much deeper, and Hess needs to address the larger problem. Elliott concludes that Hess requires a thorough restructuring that realigns its current multitude of businesses and assets into manageable, focused enterprises. Elliott believes that the appropriate board unlocking value could lead to a share price of at least $126. To that end, they believe the Hess board should: (i) spin off the Bakken along with the Eagle Ford and Utica acreage; (ii) divest downstream assets and monetize resource play infrastructure; and (iii) streamline the remaining international portfolio. On May 16, 2013, Elliott and Hess entered into an agreement to resolve Elliott's proxy contest. Pursuant to the agreement, Elliott agreed to withdraw its slate of

UNDER THE THRESHOLD - ONGOING SITUATIONS

five director nominees and support the election of Hess' five new directors. Three of Elliott's director nominees, Chase, Golub, and McManus were added to the 2015 director class, to for a 14-person reconstituted Board.

On January 8, 2014, Hess Corp. filed paperwork for the spinoff of its gasoline stations. The separation would be tax free and distribute all shares in newly formed Hess Retail Corp. to holders of Hess Corp., according to the filing. Hess will continue to seek a buyer for the unit while pursuing the spinoff, which may occur this year.

'On December 19, 2013, **Ancora Advisors, LLC** filed a 13D on **Hubbell Inc.** (even though they only reported owning 1.83%) and reported that it sent a letter to the Company's Board expressing concern that the dual class equity arrangement is anchoring the Company's stock price. Ancora believes collapsing the share class structure is the most practical remedy. Ancora believes since the Hubbell family is no longer involved in the Company's operations, and past public filings relating to litigation between the family and the Company show the family may want liquidity, it makes sense to collapse the share classes into one. Ancora states that it has seen evidence that suggests both classes of stockholders may be harmed by the dual class structure. First, Ancora states that both classes are relatively illiquid, and notes that this could be improved by collapsing the structure. Second, Ancora states there is significant empirical evidence that suggests negative valuation and return effects exist for stocks that have a dual-class equity structure. This evidence gives Ancora reason to believe the Company's stock would have achieved a higher valuation and greater returns if the Company had one equity share class. Ancora also states that as a significant holder of the A shares, it won't be willing to give up the excess voting power the A shares provide in exchange for the liquidity and elimination of the current discount that a single class equity structure would provide. Meanwhile, Ancora notes, B holders would benefit from increased relative voting power of their shares and increased liquidity. Ancora states that both shareholder groups would benefit from an increased valuation.

On December 30, 2013, **Engine Capital** sent a letter to the Board of **LSB Industries, Inc. (LXU)** stating that the Company is undervalued and that Engine believes there are opportunities to increase value substantially. Specifically, Engine believes the Board should: (i) add a number of new members with relevant backgrounds in chemical asset operations, climate control, and corporate finance, and with no ties to the Golsen family, and (ii) establish a special committee of "truly independent directors" to analyze the Company's strategic alternatives to maximize value, including separating the climate control business from the chemical assets and converting certain of the chemical assets into an MLP structure.

Engine believes the Company's total inherent value is at least $1.5 billion (valuing the climate control business at around $300-$350 million and the chemical plant business at around $1.2 billion), implying a stock price between $65-$75 per share, compared to the Company's present stock price of approximately $38. Engine believes this value gap is caused by the Company's poor governance structure, poor corporate structure, history of poor communication with shareholders, and a recent history of over-promising and under-delivering on operational matters.

Engine points out that the Company has two very different businesses with no synergies. Engine believes the best course of action may be a sale or spinoff of the climate control business. Engine believes in general that the analyst community and investors in general focus on the chemical assets and value the Company using chemical assets multiples, therefore undervaluing the higher quality climate control business that deserves a higher multiple (climate control peers trade at significantly higher multiples than chemical peers). Within the chemical division, Engine believes the Company has an opportunity to improve the tax efficiency of its corporate structure by converting its agricultural-related assets into a publicly traded MLP, which trade at higher multiples than regular corporations.

Engine also discusses the Company's capital allocation in the letter, and its 3-year capital expenditure program of around $600 million. Engine questions whether it is wise to start such a significant capex program and lever up the Company ahead of significant new production supply of ammonia coming on the market. Engine believes shareholders would have been better served by a large repurchase of undervalued stock. Engine also notes that it is difficult to evaluate the merits of this capex program because the Company refuses to share its assumptions and implied returns on investment, and Engine believes better communication with shareholders would improve the market perception of the Company and help close the value gap. Finally, Engine states that the recent operational challenges are too numerous to detail, but Engine is particularly concerned by the frequency of problems at a number of the chemical plants and management's pattern of over-promising and under-delivering when it comes to fixing these

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issues. Engine concludes its letter by stating that if significant progress is not achieved promptly, it is prepared to nominate five directors by the January 23, 2014 deadline.

Effective January 17, 2014, four of the six members of LSB Industries Board that are not deemed "independent" resigned as directors.

On April 22, 2013 at our Fourth Annual Active – Passive Investor Summit, **Jeff Ubben** of **ValueAct Capital** disclosed that ValueAct had made a $2 billion investment in **Microsoft Corporation**. Jeff made a very compelling and detailed presentation. He said that like Adobe, Microsoft suffered from a divergence of perception and reality. ValueAct thinks Microsoft is a company that is perceived to not be able to win consumers, dying with PCs, losing out to Google and irrelevant in the Cloud world. In reality, ValueAct believes Microsoft is an enterprise company with software businesses that users value, resulting in a growing recurring revenue base. Moreover, ValueAct believes that Office 365 may be a game changer and Microsoft is well positioned for the hybrid cloud world. On August 30, 2013, Microsoft and ValueAct entered into a cooperation agreement providing for regular meetings between Mason Morfit, President of ValueAct, and selected Microsoft directors and management to discuss a range of significant business issues. The agreement also gave ValueAct the option of having Morfit join the Microsoft board of directors beginning at the first quarterly board meeting after the 2013 Annual Meeting.

A group of independent shareholders led by **Bristol Capital Advisors, LLC** and **Lone Star Value Management, LLC**, formed **Concerned Miller Shareholders ("CMS")** for the purpose of seeking to unlock value at the Company by reconstituting the Board and replacing senior management. CMS stated that while the Company has valuable assets and a strong operational team on the ground in Alaska, CMS believes the Company's shares are significantly undervalued due largely to the Company's management team's lack of experience and industry knowledge together with their excessive compensation and self-dealing. CMS notes that despite failure to achieve the performance targets upon which compensation awards were conditioned, CEO, Scott Boruff, and CFO, Voyticky, each received boosts in salaries by 59% and 58% respectively, bonuses of $500,000 and $475,000, respectively, and restricted stock grants of 100,000 shares of common stock for each.

On April 19, 2013 **Trian** unveiled its stake in **Mondelez Int'l** Inc. in an amended 13F filing, along with a stake in PepsiCo. At a conference in July, Peltz said that Pepsi should acquire Mondelez and then spin off the soft drink business altogether. He also stated that Pepsi should spin off its Frito Lay unit, if it doesn't want to acquire Mondelez. On October 29, at a conference in Chicago, Peltz stated his belief that Mondelez is poorly run despite its catalog of great brands (i.e. Oreo, Trident and Cadbury). Peltz argued that the cost structure is inflated compared to peers and operating margins are not as high as they could be with a touch of operational improvements. Peltz would also like to see the Company shed its name because it sounds too much like a medicine.

On January 21, 2014 Mondelez added Nelson Peltz to its Board. In return for a seat on the Board, Peltz dropped his push for a merger to PepsiCo Inc.

In May of 2013, **Elliott Management Corp**. took a 4.5% stake in **NetApp Inc. (NTAP)**, pressing the data-storage company to change its board and study options to boost shareholder value, including a return of cash to shareholders. Elliott had suggested potential director candidates and it is also noteworthy that NetApp has been viewed as a takeover target for about a decade, with Oracle Corp. (ORCL) and Cisco Systems Inc. (CSCO) cited as potential buyers. NetApp has $5 billion of cash and less than $1 billion of debt versus almost $900 million of EBITDA. In July of 2013, NetApp announced that it planned to add two directors to its board. NetApp disclosed that it will seat Kathryn M. Hill and Tor R. Braham as its newest directors, both of whom have been involved in the technology sector for a long time and suggested by Elliott Management. Ms. Hill was most recently a senior vice president of development strategy and operations at Cisco Systems. And Mr. Braham is a longtime technology mergers banker who previously worked at Deutsche Bank and at Credit Suisse. A possible goal of adding the two directors is to help steer the company's board into considering a sale, an idea that Elliott has supported. The Company has already taken steps to return money to shareholders. In May, it rolled out a $3 billion stock buyback plan and a new quarterly cash dividend.

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Third Point purchased its position following the announced sale of its Devices and Services ("D&S") business to Microsoft for €5.44 billion in an all-cash transaction. Expected to close in Q1 2014, the deal provides €3.8 billion for the D&S business and €1.6 billion for a 10-year non-exclusive patent licensing agreement. Once the transaction is complete, "new" **Nokia** will consist of the Nokia Siemens Networks ("NSN"), the HERE maps business, and a patent portfolio known as Advanced Technologies. The Company will have approximately €8 billion of net cash when the transaction closes, and Third Point expects a meaningful portion of the excess will be distributed to shareholders in coming quarters. Either a buyback or a special dividend is possible. The de facto spin off of the D&S business leaves Nokia with a significantly different strategic and operational profile, with 40% of today's market capitalization reflected in pro forma net cash and a portfolio of three distinct businesses each generating positive free cash flow. Third Point believes that each of Nokia's businesses has interesting opportunities and dynamics. In the case of NSN, years of restructuring have resulted in a more profitable business, while the market structure has improved following years of consolidation ahead of a global 4G upgrade cycle. Having acquired Siemens' 50% stake in NSN this summer at a very attractive valuation, Nokia now has greater control over the operating and strategic prospects for the business. The HERE maps business has exceptional share in the built-in automotive navigation market (estimated at 80 – 90%) along with significant potential in portable navigation, an increasingly strategic area for smartphone vendors. The Advanced Technologies intellectual property licensing business has historically operated on a net basis in commercial agreements with other smartphone vendors. Going forward, Nokia has the opportunity to realize royalty revenues on a gross basis and focus on a broader licensing program of its 10,000 patent families, which include leadership positions in 2G/3G/4G standard essential patents, as well as a broad array of non-standard essential patents. Nokia's patent portfolio has been successfully defended in court and via settlement agreements over the years, enhancing its licensing prospects and strategic value. For years, the investment case for Nokia has centered on the prospects for the handset business with little emphasis on NSN, the maps business or the intellectual property licensing opportunity. Third Point thinks the repositioning of the "new" Nokia story will take time for the broader investment community to absorb. the prospect of a substantial one-time capital return and possible reinstatement of a regular dividend further enhances the upside potential and Nokia's commitment to return excess capital and the attractive price paid for Siemens' 50% stake in NSN suggest Nokia's leadership will remain prudent in capital allocation decisions going forward.

On July 17, **Trian Fund Management's Nelson Peltz** said that **Pepsi** should acquire the snack maker Mondelez. Trian is a big shareholder of both companies. Peltz said Pepsi should buy Mondelez and then spin off the soft drink business altogether. He argued that consumer tastes are turning against soft drinks. Peltz also said that if Pepsi doesn't want to acquire Mondelez, it should spin off its Frito Lay unit. Peltz said that the problem with Pepsi has not been management, but structure and that he would be meeting with Pepsi's management to discuss the proposal "in the very near future." Following this disclosure, Pepsi said it had held talks with the hedge fund to "consider their ideas." A day after Peltz revealed his strategy, one of Pepsi's largest shareholder, Blackrock Inc., publicly stated that it opposed Nelson Peltz's proposal. A week later after announcing a better-than-expected second-quarter profit, Pepsi CEO Indra Nooyi effectively dismissed Peltz's idea. Pepsi CFO Hugh Johnston took it one step further, saying: "You'll hear people occasionally advocate for that type of transaction," Johnston said. "The thing that they really need to look at is what's their percentage holdings of Mondelez and what's their percentage holdings of PepsiCo."

On February 13, 2014, PepsiCo stated that it will keep trying to turn around its soft-drink sales instead of splitting up the Company. The Company also stated that it will increase the cash it returns to shareholders by 35% this year, raising its combined dividends and stock buybacks to $8.7 billion. Nelson Peltz of Trian sent a 37-page letter to the Company in which he said he was "highly disappointed" with the Company's decision not to heed his proposal. In his letter, Peltz cited deteriorating North American beverage trends, questionable quality of earnings in 2013 and a disappointing 2014 profit forecast as evidence that the Company needs to act. Peltz urged the Company to spin off its beverage business and focus on the snack business to create "two leaner and more entrepreneurial companies."

In July 2012, **Bill Ackman** revealed a stake in **Procter & Gamble**. In January he stated that he did not believe Robert A. McDonald was the right CEO for the Company and that senior management had also lost confidence in him. In May, Ackman made a presentation where he called the Company one of the greatest businesses in the world with leading global consumer brands, a strong global market share, an attractive emerging markets presence, a high caliber talent force, and an innovation culture. However, Pershing stated that the Company was under-earning because of the

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bloated overhead cost structure, suboptimal manufacturing productivity levels and inefficient organizational design. Pershing stated that emerging market regions are still building scale and require investment, marketing investments are not achieving appropriate returns and pricing in certain categories are not optimized. Most of these issues, according to Pershing, are easily fixable and most of the Company's brands/products are generally in strong positions. Pershing stated that based on its view of appropriate revenue growth and operating profit margins, the Company should be earning closer to $6 per share by FY June 2016. Pershing reiterated its belief that McDonald is distracted by outside interests, including at least 21 outside organizations, and that he should be held accountable if the Company does not demonstrate a sustainable turnaround in the near term. On May 23, the Company announced that McDonald resigned and was replaced by Alan G. Lafley, a former CEO of the Company.

Concerned Rentech Shareholders, a group led by **Engaged Capital, LLC** and **Lone Star Value Management, LLC**, that owns 4.6% of the Company's outstanding shares, announced on January 13, 2014 that it nominated the following four candidates for election to the Board at the upcoming 2014 Annual Meeting: (i) Jeffrey J. Brown, (ii) Jeffrey E. Eberwein, (iii) Larry Holley and (iv) Glenn W. Welling. Concerned Rentech Shareholders highlighted its frustration at the continued destruction of shareholder value at the Company and the persistent missteps and lapses in oversight that have caused the group to lose confidence in the Board's ability to oversee the Company. Concerned Rentech Shareholders stated that the most egregious of these missteps include: (a) a failed alternative energy business, (b) spending $158 million on a fertilizer plant with no real operating history to then write down the value of the asset by $30 million within a year of completing the transaction, (c) the Board approving expenditures with a total value of around $100 million in a business where the Company has no institutional expertise, (d) after failing to secure support from the Company's experienced joint venture partner, Graanul Invest AS, the Board approved using the Company's most valuable asset, RNF shares, as collateral in order to finance the Company's significantly increased capital investment and (e) maintaining an unjustifiably high cost structure built for a business seven times the Company's size. Concerned Rentech Shareholders concluded that immediate Board reconstitution, including through direct shareholder representation, is needed to ensure that all decisions are in the best interests of the Company's shareholders.

Also, on December 27, 2013, Concerned Rentech Shareholders submitted to the Board a formal request for exemption under the Company's Tax Benefit Preservation Plan to allow the group to acquire beneficial ownership in the aggregate of up to 7% of the outstanding shares of the Company's stock. To date, the Board has not responded to this request, and the Rights Plan prohibits any shareholder from acquiring in excess of 5% except in certain limited circumstances.

On May 14, 2013, **Third Point** sent a letter to the President and CEO of **Sony** informing him that Third Point has acquired an economic stake of more than 6% in Sony, later increased to 7% (including swaps) for a value of $1.4 billion. Third Point recommended that Sony: (i) take public a 15—20% stake in Sony Entertainment through subscription rights to current shareholders, allowing it to thrive independently with the support of the Sony parent company while increasing capital to revitalize Sony Electronics; (ii) focus on its industry-leading businesses to bring growth to Sony Electronics and streamline its product offerings to improve profitability; and (iii) increase its prospects in underappreciated assets such as Sony Financial, M3, Olympus, Japan Display, its intellectual property portfolio, its $11.5 billion of deferred tax assets, and its brand allure. Third Point offered its assistance and stated that they would gladly accept a seat on Sony's Board to help implement their proposal. In an investor letter sent on July 29, 2013, Third Point stated that they are eagerly awaiting the effects from the changes from Prime Minister Shinzo Abe's economic plan, which according to Third Point, should benefit Japanese companies like Sony. Third Point also mentions that the new Sony management team has made difficult decisions in the Electronics business by reducing overhead and cutting products, and Third Point highlights that Sony has gained market share in smartphones. Third Point also notes that growth in the smartphone business has been accompanied by a "perfectly executed introduction of the PlayStation 4 ("PS4") platform." These improvements in the Electronics division has caused Third Point to rethink their approach to valuing Electronics – they believe the Game and Mobile Products divisions are now poised to join the Devices business as meaningful profit contributors, with the Television business becoming a marginal drag. Third Point believes that its proposal to partially list Entertainment should increase overall profitability and provide capital to accelerate restructuring at Electronics. Third Point expressed concern about the Entertainment division, which it believes is poorly managed and is generating profitability levels below its competitors; however, Third Point states its research has revealed Entertainment's hidden value in the film business and meaningful value in the Music division, particularly in VEVO and GraceNote. Third Point would like to see a revived Electronics combined with a well-managed,

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publicly-listed Entertainment business, and believes it would make for a stronger Sony and offer tremendous value for shareholders.

On November 20, 2013, **Orange Capital, LLC** announced its intention to nominate four independent directors to the Board of **Strategic Hotels & Resorts, Inc. (BEE).** Orange Capital, who retained proxy solicitation firm, Okapi Partners LLC, owns approximately 4% of the Company's outstanding common shares. Orange Capital recommends that the Company explore strategic alternatives, set a strategy for realizing NAV and reform the Company's governance. Orange Capital believes the Company's underperformance is directly linked to its poor corporate governance practices and the lack of a coherent strategy to maximize value. In its presentation, Orange Capital stated its belief that the intrinsic value of the Company's assets are worth up to $14 per share (presently trading at $8.91 per share), and it is skeptical about the Company's ability to compete effectively as an acquisition/growth vehicle. Orange Capital asserts that more than any single idea, the Company and its Board need a cultural change that only comes with the election of new, independent directors. Orange Capital points out that on every key governance issue, the Board has failed to respond appropriately to shareholder concerns - Orange Capital explains there are problematic compensation practices, consistently low average director support, failure to consider outside candidates in CEO search, no separation of Chairman and CEO, a long record of ISS and Glass Lewis concerns and structure defenses that Orange Capital believes serve to unnecessary entrench the Board and management. Orange Capital also believes that the Company should have interviewed other qualified candidates instead of following an "outdated CEO succession plan" and appointing Rip Gellein as CEO.

On December 17, 2013, Orange Capital, LLC sent a letter to the Company expressing its shock and outrage that the Company sold the Four Seasons Punta Mita Resort to Cascade Investment, L.L.C. in a non-marketed, exclusively negotiated sale process (Orange Capital concluded it was non-marketed and exclusively negotiated based on its own market intelligence, consistent with other sources). Orange Capital asks the Company why it would enter into a sale agreement with respect to a "trophy asset" without a formal, competitive sale process. Orange Capital wonders if this was an attempt to "buy votes" in advance of an upcoming proxy contest? Orange Capital states that while Cascade acted in its own best interest, Orange Capital questions the Board's motives to exclusively engage with such a large shareholder at the present time. Orange Capital believes the Punta Mita sale process was "deeply flawed and conflicted, and represents not only a serious violation of shareholder trust but also another breakdown of Board oversight." Orange Capital points out that shareholders will never have any assurance that Cascade's offer represented the highest price available. Orange Capital believes this sale process is another example of what Orange Capital believes are value-destroying governance practices at the Company. Orange Capital states it does not intend to sit idly by and intends to explore all potential legal avenues to support the interest of shareholders that the Board is supposed to be serving. On March 7, 2014, the Company and Orange Capital entered into a Settlement Agreement pursuant to which, among other things, the Company's Board appointed David W. Johnson as a director effective immediately. Orange Capital withdrew its notice of intent to nominate four directors at the 2014 Annual Meeting and agreed to certain standstill provisions until the conclusion of the 2015 Annual Meeting.

On January 21, 2014, in a letter to investors, **Third Point** disclosed that it bought shares of **T-Mobile** at $25.00 per share when the Company conducted a secondary offering in November. Third Point was attracted by the Company's takeover prospects, as well as its improving operating performance and relative valuation compared with peers. Third Point stated in its investor letter that in additional to the Company's fundamental value proposition, the Company is strategically interesting for Sprint and potentially DISH, which has driven the shares higher.

Blue Harbour disclosed its investment in **Tribune Co.** in February 2014 at the annual meeting of EnTrust Capital. Blue Harbour has urged the Company to take steps including selling its real-estate holdings and the spectrum its broadcast properties own.

On December 19, 2013, **Clinton** sent a letter to the Board of **Violin Memory, Inc.** (which recently went public on September 27, 2013) urging the Company to hire a banker and announce a sale process. Clinton's best estimate on value that a buyer would be willing to pay is $400 to $500 million in enterprise value, which equates to approx. $6 to $7 per share on a fully diluted basis. Clinton points out that multiples paid in recent transactions in this sector more than support its valuation expectations. For example, Cisco paid a mid-teens revenue multiple to acquire WHIPTAIL in September 2013. Clinton believes the Company's technology can be best exploited by putting it in the hands of an

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industry player with an existing global sales, and marketing infrastructure and an established customer base.

MORRISONS

On January 10, 2014, it was reported that **Elliott** and other activists have built up a stake in **Wm Morrison** and are pushing for it to spin-out the majority of its freehold property assets into another company that would then be floated. On January 18, 2014, it was revealed that the second activist investor involved in the Company is **Sandell Asset Management.** " I think we were in Morrisons before Elliott got involved," Mr Sandell said, when asked if there were any other British companies that were ripe for investor activism. He declined to comment on Elliott's proposals for the supermarket group.

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Activist/Activist Defense Directory

Investment Banks

	Contact	Phone Number	E-mail
Bank of America/Merrill Lynch	Kevin J. Daniels	(646) 855-4274	kevin.j.daniels@baml.com
Barclays (Solely Corporate Counsel)	Daniel Kerstein	(212) 526-0406	daniel.kerstein@barclays.com
CamberView Partners, LLC	Abe M. Friedman	(415) 906-6501	abe.friedman@camberview.com
Citibank	Scott Davis	(212) 816-4571	scott.g.davis@citi.com
Credit Suisse	Chris Young	(212) 538-2335	chris.young@credit-suisse.com
Evercore Partners	Lyle Ayes	(212) 849-3699	lyle.ayes@evercore.com
Goldman Sachs (Solely Corporate Counsel)	Bill Anderson	(212) 902-0043	william.anderson@gs.com
Greenhill & Co., LLC	Birger K. Berendes	(212) 389-1564	bberendes@greenhill.com
Houlihan Lokey	Gregg Feinstein	(212) 497-7885	gfeinstein@hl.com
J.P. Morgan	David A. Hunker	(212) 622-3724	david.a.hunker@jpmorgan.com
Morgan Stanley	Mahmoud Mamdani	(212) 761-7472	mahmoud.mamdani@ morganstanley.com
	Jason Truman	(212) 761-3568	jason.truman@morganstanley.com
Moelis & Company	Craig Wadler	(310) 443-2330	craig.wadler@moelis.com
Perella Weinberg	Riccardo Benedetti	(212) 287-3178	rbenedetti@pwpartners.com
Societe Generale (Derivatives)	Joseph White	(212) 278-5126	joseph.white@sgcib.com
Wells Fargo	Stavros Tsibiridis	(212) 214 5273	stavros.tsibiridis@wellsfargo.com

Law Firms

	Contact	Phone Number	E-mail
Cravath, Swaine & Moore (for	Robert I. Townsend III	(212) 474-1964	rtownsend@cravath.com
Activist Defense only)	Faiza J. Saeed	(212) 474-1454	fsaeed@cravath.com
Goodwin Procter	Joseph L. Johnson	(617) 570-1633	jjohnson@goodwinprocter.com
Latham & Watkins	Paul Tosetti	(213) 891-8770	paul.tosetti@lw.com
Olshan Frome Wolosky	Steve Wolosky	(212) 451-2333	swolosky@olshanlaw.com
Sullivan & Cromwell	James C. Morphy	(212) 558-4000	morphyj@sullcrom.com
Schulte Roth & Zabel	Marc Weingarten	(212) 756-2280	marc.weingarten@srz.com
	David Rosewater	(212) 756-2208	david.rosewater@srz.com
Shearman & Sterling	Robert M. Katz	(212) 848-8008	rkatz@shearman.com
Skadden, Arps, Slate, Meagher & Flom LLP	Richard Grossman	(212) 735-2116	richard.grossman@skadden.com
Vinson & Elkins LLP	Stephen M. Gill	(713) 758-4458	sgill@velaw.com
	Kai H. Liekefett	(713) 758-3839	kliekefett@velaw.com
Wachtell Lipton (Primarily Corporate Counsel)	David A. Katz	(212) 403-1309	dakatz@wlrk.com

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Proxy Solicitors

	Contact	Phone Number	E-mail
Innisfree	Art Crozier	(212) 750-5837	acrozier@innisfreema.com
Mackenzie Partners	Daniel H. Burch	(212) 929-5748	dburch@mackenziepartners.com
Morrow & Co.	John Ferguson	(203) 658-9400	j.ferguson@morrowco.com
Okapi Partners	Bruce H. Goldfarb	(212) 297-0722	bhgoldfarb@okapipartners.com

Public Relations

	Contact	Phone Number	E-mail
ICR, Inc.	Don Duffy	(203) 682-8215	dduffy@icrinc.com
Joele Frank	Matthew Sherman	(212) 355-4449	msherman@joelefrank.com
Sard Verbinnen & Co.	George Sard	(212) 687-8080	gsard@sardverb.com
	Paul Verbinnen	(212) 687-8080	pv@sardverb.com

Executive Recruiters
(for Activist and Defense Board Nominees)

	Contact	Phone Number	E-mail
Seiden Krieger Associates, Inc.	Steven Seiden	(212) 688-8383	steven@seidenkrieger.com

Research Services

	Contact	Phone Number	E-mail
13D Monitor	Ken Squire	(212) 223-2282	ksquire@icomm-net.com

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